

COUNTY ATTORNEY'S OFFICE

PERFORMANCE PLAN FY10

Contribution to Montgomery Results

- A Responsive and Accountable County Government
- Affordable Housing in an Inclusive Community
- An Effective and Efficient Transportation Network
- Children Prepared to Live and Learn
- Healthy and Sustainable Communities
- Safe Streets and Secure Neighborhoods
- A Strong and Vibrant Economy
- Vital Living for all of Our Residents

Office of the County Attorney At-A-Glance

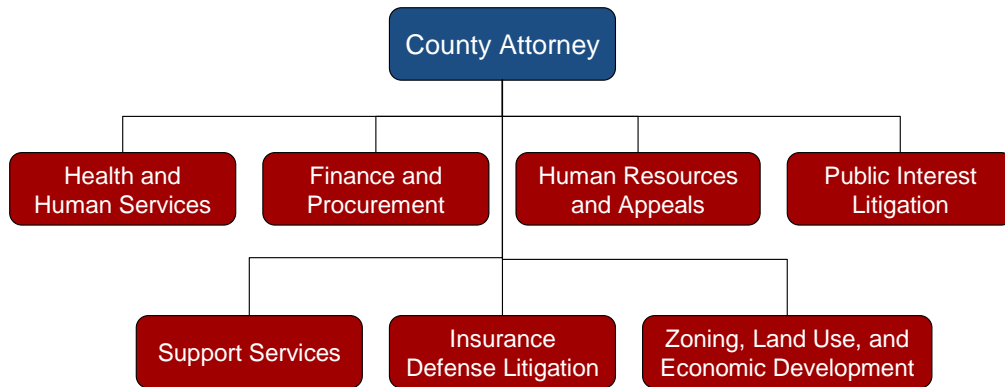
What OCA Does and for Whom	How Much*
<p><u>In General</u></p> <ul style="list-style-type: none"> ▪ The Office of the County Attorney enables County Government carry out its policies and operations in a manner that: <ul style="list-style-type: none"> – minimizes legal and economic risk; and – complies with applicable federal, state, and local regulation; and ▪ provides legal services to County Government, primarily litigation, that promote public safety, health, and welfare 	<ul style="list-style-type: none"> ▪ 72.4 WY ▪ \$9.44M budget
<p><u>Transactional Support</u></p> <ul style="list-style-type: none"> ▪ Procurement Contracts -- DGS ▪ Memoranda of Understanding and Agreements – All Departments ▪ Real Estate Transactions and Condemnations – DOT, DGS, DHCA, DED, CEX 	<ul style="list-style-type: none"> ▪ 12 WY ▪ \$1.75M budget
<p><u>General Counsel/ Advisory Support</u></p> <ul style="list-style-type: none"> ▪ Wraparound General Counsel Service - - All County Departments ▪ Drafting Legislation/Regulations – All County Departments ▪ Advice on County Operations/Policies – All County Departments 	<ul style="list-style-type: none"> ▪ 8.7WY ▪ \$1.41M budget
<p><u>Internal Support</u> – County Attorney</p>	<ul style="list-style-type: none"> ▪ 7.7 WY ▪ \$700K budget

Office of the County Attorney At-A-Glance

What OCA Does and for Whom	How Much*
<p><u>Litigation</u></p> <ul style="list-style-type: none"> ▪ Represent the Self-Insurance Fund - Liability Cases and Worker's Compensation ▪ Commercial Litigation - All County Departments ▪ Personnel and Human Resources Including Litigation and Collective Bargaining – OHR and all County Departments ▪ Non-personnel Administrative Litigation – All County Departments ▪ Child Welfare Litigation – Department of Health and Human Services ▪ Public Interest (Affirmative) Litigation <ul style="list-style-type: none"> – Code Enforcement – DHCA, DED, DFRS, DPS, PD – Debt Collection – Department of Finance – Forfeiture – Police Department – Subrogation – Risk Management – Other Affirmative Litigation – Multiple Departments 	<ul style="list-style-type: none"> ▪ 18.15 WY \$2.4M budget ▪ 1.25 WY \$200K budget ▪ 4.85 WY \$860K budget ▪ 0.4 WY \$61K budget ▪ 9.0 WY \$1M budget ▪ 10.4 WY \$981K budget

* *Approximate values*

Organizational Structure



76 positions, 42.8 WYs

Proposed Headline Measures

Economic outcomes

1. Self-insurance fund litigation – Variance between County offered settlement and final settlement/judgment
2. Worker’s compensation – Gain/loss from split between County adjustment and claimant’s adjustment.
3. Debt collection, code enforcement, subrogation, and forfeiture – Variance between amount owed and amount collected (*under construction*)

Litigation outcomes

4. Percent of child welfare litigation cases with a positive outcome (*under construction*)
5. Percent of appeals won
 - a. Judicial appeals
 - b. Administrative appeals

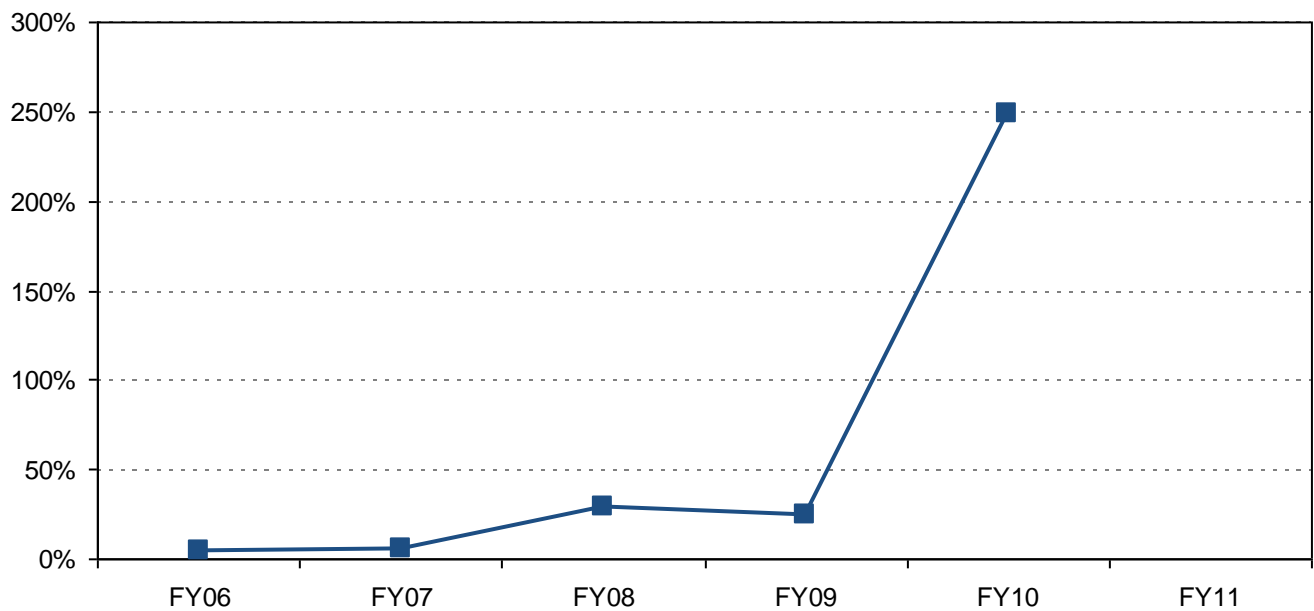
Customer satisfaction

6. Average rating from Internal Customer Satisfaction Survey

Liability analysis

7. Qualitative analysis of unforeseen or preventable events of liability (*under construction*)

Measure 1: Self-Insurance Litigation – Variance Between County Offered Settlement and Final Settlement/Judgment¹



¹ FY 10 figures are for partial year only and accordingly figures may not be representative.

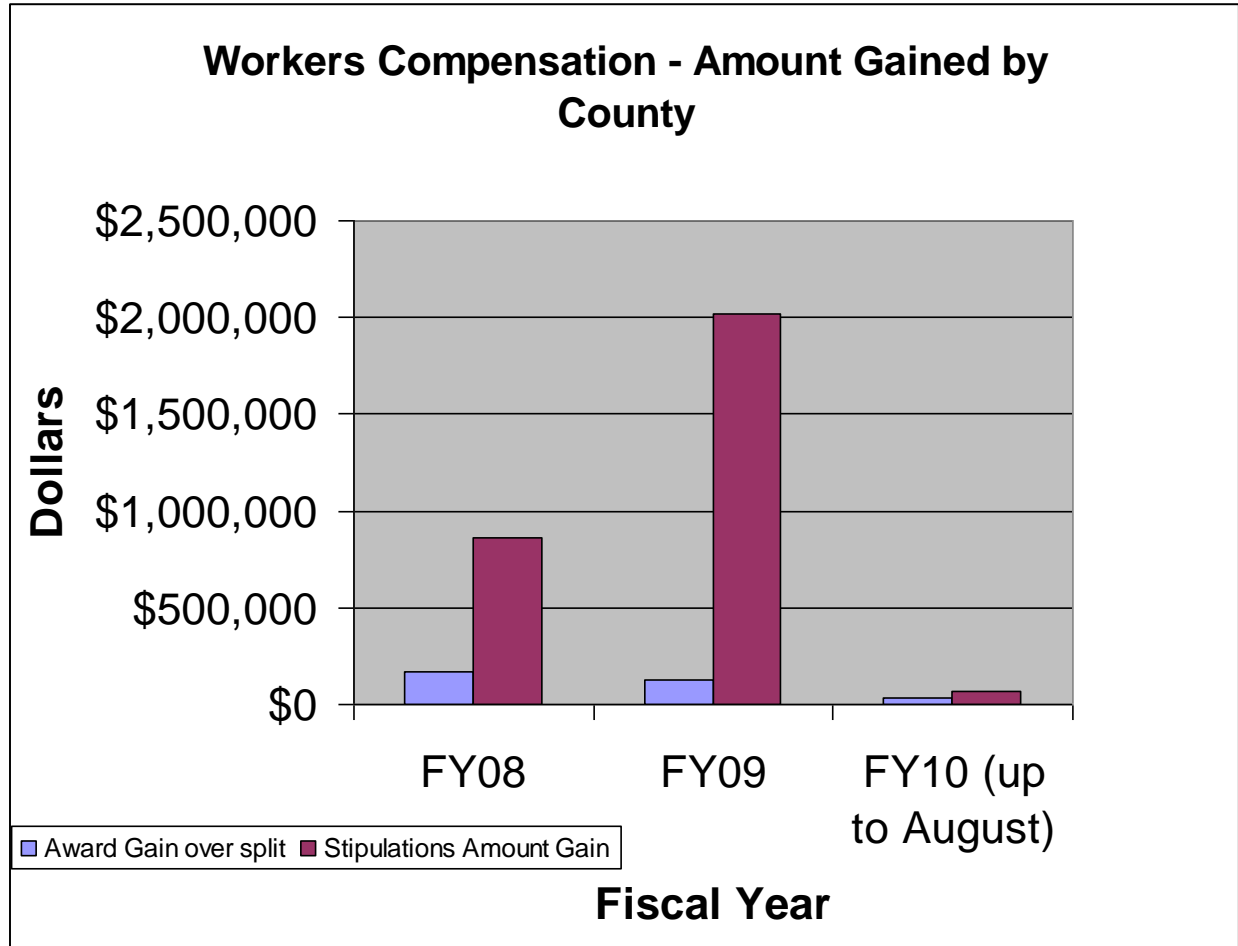
Measure 1: Self-Insurance Litigation – Variance Between County Offered Settlement and Final Settlement/Judgment

Comparison of settlements offered and amounts paid

	FY06	FY07	FY08	FY09	FY10 (through Nov.)
Last settlement amount offered by plaintiff	\$147,472,393	\$157,456,145	\$526,357,993	\$4,204,487	\$33,900
Last settlement amount offered by County	\$821,082	\$5,930,954	\$1,272,850	\$653,872	\$23,500
Total settlements paid	\$813,773	\$6,222,627*	\$1,577,413	\$767,122	\$54,673
Total judgments paid	\$46,579	\$38,904	\$56,896	\$47,017	\$27,332
# Settlements	33	45	39	35	7
# Judgment pays	4	7	8	6	5
Total Settlements + Judgments Paid	\$860,532	\$6,261,531	\$1,636,309	\$814,139	\$82,005

** This aberrationally high settlement amount corresponds to a single civil rights case (in which Local Government Tort Liability limits do not apply) where the settlement was for several million dollars.*

Measure 2: Worker's Compensation



Headline measure #2
Worker's Compensation Caseload/Gain Over Split

Workers Comp	FY06	FY07	FY08	FY09	FY10 (through Oct.)
Cases Received	712	749	741	680	249
WC Hearings	1,861	2,054	2,228	2,284	672
Cases Closed	733	1,049	753	806	510
Stipulations by Adjusters	-	-	9	1	0*
Stipulations by OCA	-	-	97	52	5*
Full and Finals	-	-	3	5	2*
Stipulations Amount Gain	-	-	\$164,843.5	\$126,037.5	\$30,417.15*
Award Gain over split	-	-	\$863,809.54	\$2,015,791.65	\$64,091.40*

*FY10 – up to August 2009

In cases concerning the nature and extend of employees' injuries, these gains with regards to stipulations and awards represent the degree that the payments are below the doctors' rating assigned to employees and employers.

Measure 3: Debt Collection, Subrogation, Code Enforcement, Forfeitures – Variance Between Amount Owed/Sought and Amount Collected

- OCA will track how much is either owed or demanded in each of debt collection, subrogation, code enforcement and forfeitures, and how much is actually collected and will report the difference for each category
- In code enforcement, OCA will over time move toward tracking time to compliance by cited parties, with particular focus on repeat offenders, in addition to tracking amounts collected.

Measure 3: Debt Collection, Subrogation, Code Enforcement, Forfeitures – Variance Between Amount Owed/Sought and Amount Collected

Amounts collected

	FY06	FY07	FY08	FY09	FY10 (through Oct.)
Debt Collection	\$12,298,896	\$8,161,451	\$23,799,532	\$43,016,983	\$4,418,180
Subrogation	\$206,220	\$133,091	\$88,165	\$104,198	\$24,871
Code Enforcement	\$515,083	\$580,961	\$399,451	\$708,523	\$153,802 (through Sept.)
Forfeitures	\$0	\$0	\$45,825	\$94,440	\$53,596
Totals	\$13,020,198	\$8,875,504	\$24,332,972	\$43,924,144	\$4,650,449

Measures 1, 2, and 3: Economic Outcomes

What constitutes good performance for these measures?

- Without compromising the County's responsibility and commitment to appropriately compensate those who are injured, and to adhere to the law in its affirmative litigation practices, County Attorney litigation activities will display a stable or downward trend in defensive litigation and a stable or upward trend in affirmative litigation areas

Contributing Factors

- OCA hires and retains high-quality attorneys
- OCA provides on-going training to attorneys
- OCA coordinates closely with client departments
- OCA's approach to settlement avoids costs of litigation and bad outcome risks
- Very experienced and efficient Debt Collection Unit
- OCA attorneys are highly respected in bench and bar

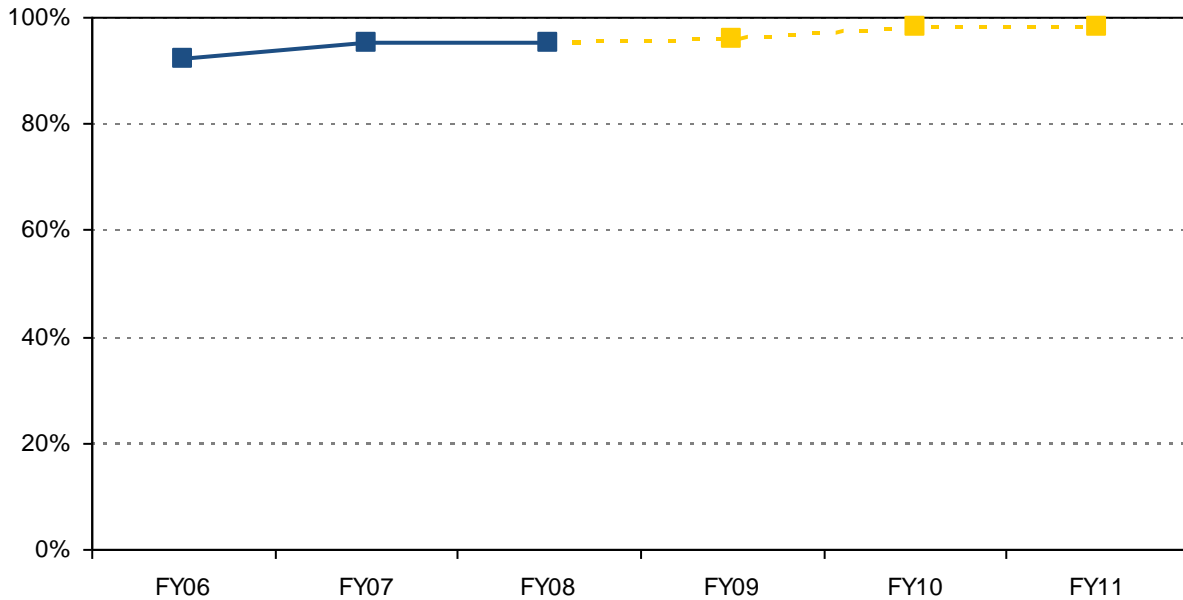
Restricting Factors

- Forfeiture -- Need for further strategic thinking and coordination with Police Department to maximize appropriate forfeiture opportunities.
- Code Enforcement – Exploding caseload
- Worker's Compensation Issues
 - Legislative presumptions increase compensation
 - Fraud
 - Procedural rules and practices that may disadvantage County in litigation

Improvement Strategies

- Worker's Compensation – Legislative strategy will focus on opportunities to improve procedural conditions before the Worker's Compensation Commission
- Time to Compliance -- Code enforcement litigation strategy and data development will focus on accelerating time to full compliance. This will be followed as distinct outcome measure in future reports.
- Repeat offenders – Code enforcement strategies will focus on fast-track and more comprehensive treatment of recidivists.
- Asset Forfeiture – Continuing dialogue between OCA and MCPD to identify other opportunities for forfeiture litigation.

Measure 4: Percent of Child Welfare Litigation Cases with a Positive Outcome



Data is under construction, but the County very rarely loses any of these cases. The role of the Office of the County Attorney is to validate the social worker's judgment in court proceedings.

Measure 4: Percent of Child Welfare Litigation Cases with a Positive Outcome

Workload of child welfare litigation

Action – Child Welfare Services/ Juvenile Court	FY05	FY06	FY07	FY08	FY09	FY10
Number of Children in Need of Assistance (CINA) or Guardianship Hearings	1,845	1,659	1,712	2,284	2,617	444
Number of New CINA Petitions Filed	334	249	276	255	305	20
Number of CINA Cases Closed	317	260	267	234	278	36
Number of New Termination of Parental Rights (TPR) Petitions Filed	33	30	44	59	44	12
Number of TPRs Granted	37	20	16	71	30	11
Number of New Adoption Petitions Filed	31	15	23	16	57	2
Number of Adoptions Granted	30	10	21	22	57	1

Measure 4: Percent of Child Welfare Litigation Cases with a Positive Outcome

What constitutes good performance for this measure?

- All but a very small number of CINA and TPR petitions will be granted.

Contributing Factors

- High-quality OCA staff and high-quality corps of contract attorneys
- Excellent coordination with client agency
- OCA attorneys highly-respected by bench and bar

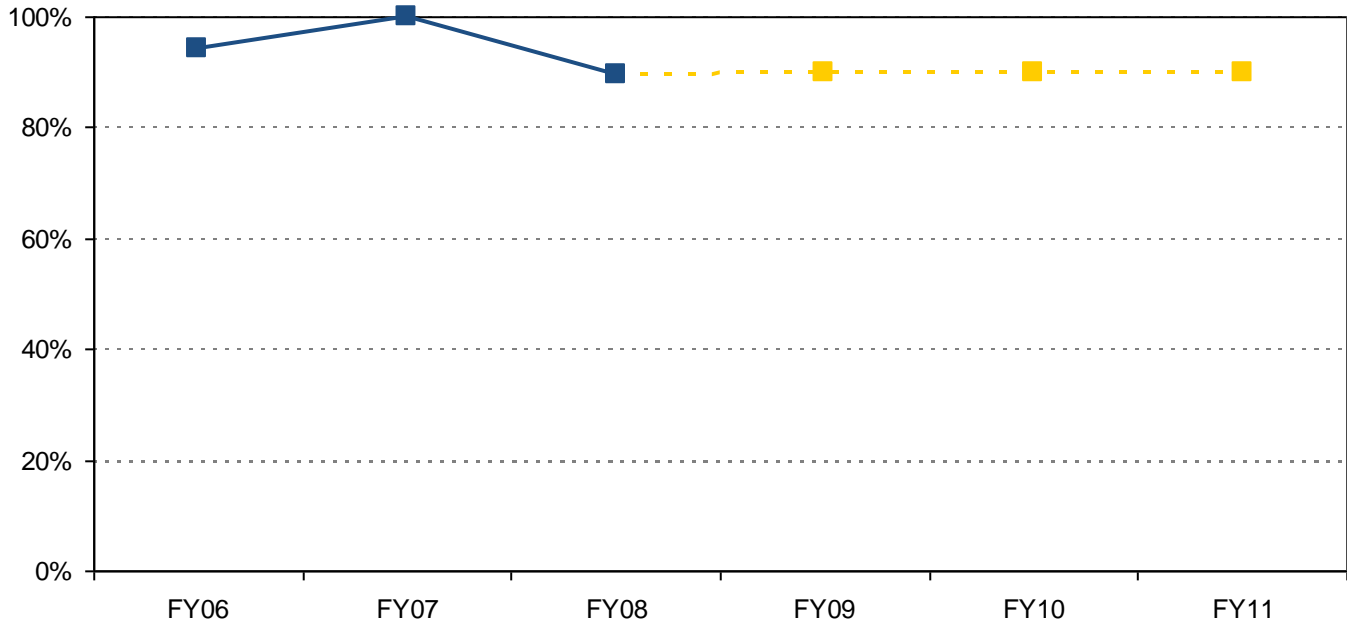
Restricting Factors

- OCA lawyers assigned to Child Welfare case also handle HHS general counsel matters, placing considerable pressure on our ability to handle both missions.
- Growing caseload in difficult economic times may challenge OCA's ability to maintain its high-level of litigation success in this area

Improvement Strategies

- Faster resolution – Overall litigation strategy will focus on bringing finality to matters more expeditiously.
- One judge/one family – Advocacy strategy will continue to focus on one-judge/one-family approach

Measure 5a.: Percent of Judicial Appeals Won



	FY06	FY07	FY08	FY09	FY10
Appeals won	16	15	17	7	6
Appeals lost	1	0	2	4	2

Measure 5b.: Percent of Judicial Appeals Won
(under construction)

What constitutes good performance for this measure?

OCA will have a high measure of success in appeals, which evidences sound legal advice and positions taken during trial

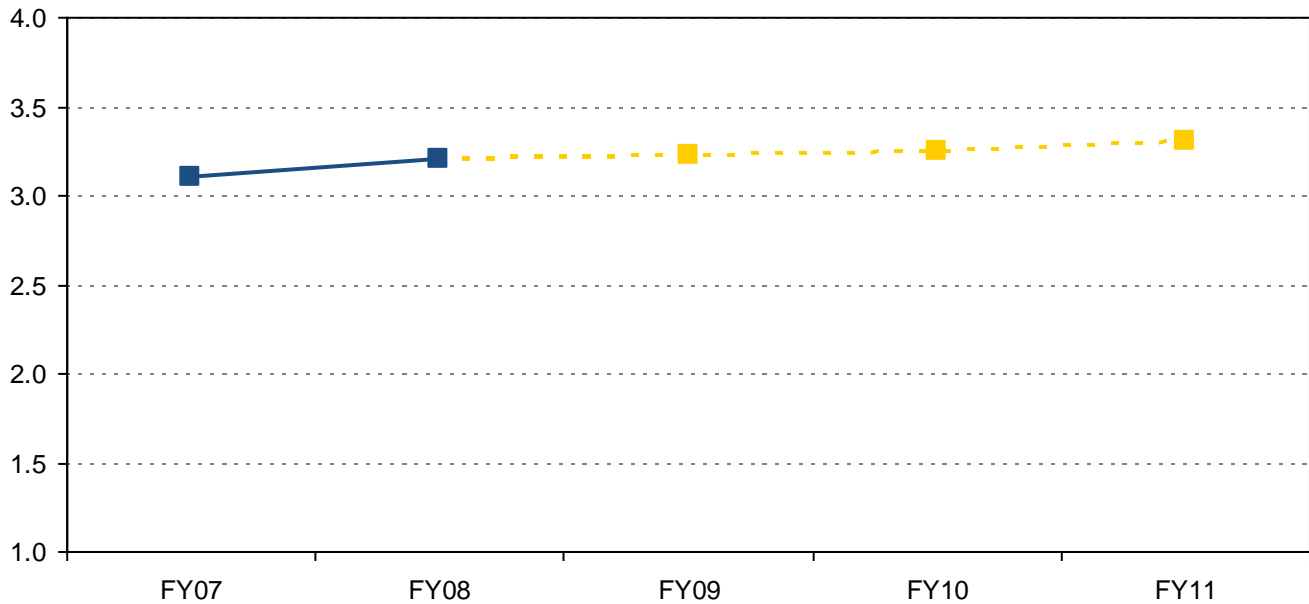
Contributing Factors

- High-level of experience among attorneys at all levels of practice
- Legal positions are carefully researched and thought through
- OCA lawyers highly respected by bench and bar

Restricting Factors

- Areas of legal uncertainty

Measure 6a: Average Rating from Internal Customer Satisfaction Survey



This is the average rating received by the Office of the County Attorney across all twelve questions of the annual Internal Survey.

Measure 6b: Average Rating from Internal Customer Satisfaction Survey as to Timeliness

Average rating for Question 11: Timeliness	2007	2008	2009
Office of the County Attorney	3.05	3.22	In progress
Average across departments	2.85	2.99	In progress

Measure 6: Average Rating from Internal Customer Satisfaction Survey

What constitutes good performance for this measure?

- A high proportion of internal clients will rate their satisfaction with our responsiveness and the quality of our legal work product at the level of “very satisfied.”

Contributing Factors

- OCA has a strongly-embedded culture of responsiveness and client support
- Responsiveness to clients is viewed as an important performance measure by OCA supervisors
- Senior managers are also involved in facilitating the client relationship
- General counsel plan seeks to further strengthen client relationships
- Many of our internal clients understand the role of the lawyer and the importance of risk minimization and accept the importance of our mission
- Timeliness of service is given significant weight in performance evaluations
- OCA management will intervene where timeliness issues arise
- High-level of professionalism and commitment from OCA staff at all levels.
- Internal clients generally understand our process

Measure 6: Average Rating from Internal Customer Satisfaction Survey

Restricting Factors

- Isolated pockets of bad customer service
 - Failure to return telephone calls
 - Inadequate explanation of legal positions
 - Failure to offer alternatives
- Isolated pockets of inadequate preparation
 - Legal advice based on impression of the law rather than understanding of the law
- Lawyer client communication failures
- Inadequate understanding of OCA's role and the importance of preventing financial risk and non-compliance with the law
- Diminishing budgets mean inability to grow legal staff as caseloads continue to grow
- Occasional failure to keep client leads to perception of untimeliness
- Crushing caseloads

Improvement Strategies

- Continue to focus on training and education of both attorneys and clients in the legal and operational issues that arise in our work
- Increase proactive attention to the quality of client relationships through regular consultation

Measure 7: Qualitative Analysis of Unforeseen or Preventable Events of Liability

- A qualitative (non-quantitative) and confidential criterion;
- Rarely involves more than one or two events each year;
- However, provides critical opportunity for evaluating process of rendering legal advice.

What constitutes good performance for this measure?

- This measure is used as a way to examine significant adverse legal events (e.g. – major lawsuits, external findings of non-compliance), and to evaluate self-critically the role that the giving and receiving of legal advice played or did not play in the adverse legal event.
- Under this criteria, our goal is ensure that to the extent possible we identify legal risks associated with County policy and operations, and that we either prevent those risks or make a thoughtful decision to undertake the risks.

Contributing Factors

- OCA's culture favors giving conservative legal advice, where compliance or economic risk is presented.
- Internal clients are generally receptive when significant legal risks are identified.

Restricting Factors

- Uncertainty in interpretations of law

Appendix A: Budget

- No budget enhancements are sought at this time

Appendix B: Implementation

- Worker's Compensation legislative agenda to be implemented by 2011 General Assembly session

Appendix C: Data Development Agenda

- Worker's Compensation Split (fully developed by 4/10)
- Data re: time to compliance (fully developed by 7/10)
- Data re: percentage of success in appeals (fully developed by 2/10)
- New forfeiture strategy (timing uncertain)

ADDENDUM: Responsive and Sustainable Leadership

Responsive and Sustainable Leadership has been the cornerstone of the County Executive's vision for Montgomery County government. To advance this vision, we have identified the following overarching goals for all County departments:

1) Collaborations and Partnerships:

Department actively participates in collaborations and partnerships with other departments to improve results beyond the scope of its own performance measures.

- OCA's work is inherently collaborative as we support the efforts of all County agencies
- ARRA Compliance committee
- Tuition Assistance Investigation
- Risk management

2) Innovations:

Department actively seeks to be innovative in its efforts to improve performance.

- ARRA Compliance Committee – Development of this initiative was lead by OCA

3) Effective and Productive Use of the Workforce/Resources:

Department actively works to effectively and productively use its workforce/resources, including, but not limited to, better management of overtime, implementation of productivity improvements, reduction of ongoing costs, and efficient use of other resources.

- We have required attorneys to log their overtime in order to properly assess the adequacy of our resources

4) Succession Planning:

Department actively plans for changes in its workforce, in order to maintain continuity of services, develop staff capabilities, maintain and/or transfer knowledge, and enhance performance.

- Junior Lawyer's Luncheons – These events focus on fostering the development of OCA lawyers under
- Encouragement of participation in continuing legal education and in the International Municipal Lawyer's Association

5) Internal Controls and Risk Management:

Department actively assess its internal control strengths, weaknesses, and risks regarding compliance with laws and regulations, recording of financial transactions and stewardship over County assets. As subset of this goal, each department also manages risk pertaining to improving workplace safety, decreasing work-related injuries, and reducing County exposure to litigation.

- N/A

6) **Environmental Stewardship:**

Department actively makes appropriate changes to workplace operations, workflow, employee behavior, equipment use, and public interactions to increase energy-efficiency, reduce its environmental footprint, and implement other environmentally responsible practices.

- Telecommuting
- Practices oriented toward reducing utilization of paper